28 Jan 08

USPTO
P.O Box 1450
Alexandria, VA 22313

REF: 10/759,830, Response to Office Action,
via certified U.S. Mail (7007-0220-0001-7524-4722)

Dear Sir:

Enclosed is my response to the Office Action dated Sep 2nd, 2007.

Dale Pate, DC#263121
Washington-CI. H4109
4455 Sam Mutchell Dr.
Chipley, FL 32428

This document is Applicant's timely response to the Office Action mailed on 20071002. The Office Action states that "A shortened statutory period for reply is set to expire 3 month(s)..." and, "Extensions of time may be available under the provisions of 37 CFR 1.136(a) ... however... in no event... may a reply be timely filed after six (6) months..." Applicant has twice previsouly written the USPTO requesting 24 months to file an amended application, however, no response to this request has been received. Nonetheless, this Applicant specifically responds herein to the issues raised within the above cited Office Action.

It appears that the examiner has preliminarly rejected Applicant's Claims 1-3 as being vague, indefinite and a claim of prior art under 35 USC 102(b) by the disclosure of Markopoulos et al (20020184102). Applicant notes that the examiner included two additional documents "not relied upon" but considered pertinent to this Application. The cited rejection of claims, as stated within the Office Action, is not finial and is pending presumely awaiting a response from this Applicant. Therefore the following is addresses herein:

I claims 1-3 are vague and indefinite
II Prior Art - Markopoulos et al.
III Dworkin; Kroger Article.

[left blank]

Issue I

As previously stated this Applicant has twice written the USPTO requesting an extension of twenty-four (24) months in which to amend and file an amended application. Again, a third request is herein incorporated. The Amended Application will set forth all claims succintly and definitely.

[Left Blank]

Issue II -

Markopoulos claims to have invented a model, method, and system in which "sellers" resell information (the price of a particular item) to the consumer. who uses the Internet to compare product prices. The agent that conducts both the search for the information, and the purchase and sale transaction, is a Shopbot. In [0015] its stated that "Shopbots are programs that automatically search the Internet for information that pertains to the price and quality of adverstised goods and services on behalf of consumers." In [0019] Markopoulos states that "the fundemental difference between ... the present invention over that of prior art is that in the preferred embodiment the buyers can be charged by sellers for price information, when they choose to compare prices with the help of a shopbot." Furthermore, in [0021] its stated that "the price information may be provided to the seller by a variety of known ways, including via shopbot or directly via a seller of the product." At the time Markopoulos was aware of pending legal action that could make Shopbots illegal. In [0074] the issue is discussed. Today, without the permission of the website owner, Shopbots are illegal. Shopbots must obey a website's Terms and Conditions of Usage, and most, if not all websites disallow datamining (as Markopoulos notes). Markopoulos identifies three (3) methods with which to collect the information: A "variety of known ways"; Shopbots; the Seller.

[left Blank]

a) Known ways – This applicant's Invention does not use a "known" method in obtaining the information. The process of collecting the information is a back-end operation and may be subject of a future patent. In the amended application the method is briefly discussed, but it is non-specific.

b) Shopbots – A clear distinction must be understood between applicant's invention, prior art, if any, and Markopoulos. Applicant obtains the information by visiting each local, brick and mortar, grocery store. Online grocery stores that display the inventory of local stores are the only relevant websites. All of these websites prohibit datamining and therefore render Shopbots illegal. Applicant's invention does not use Shopbots.

c) The Seller – The information is not obtained from sellers in which the seller delivers the information. Applicant suggests that Markopoulos means the "seller" (in context of Shopbots) as the seller willingly suppling the information; for a fee the seller's information is posted or published. This is the current model of most price comparison websites. They pay to have their products listed and provide the information.

[Left Blank]

It is important to note that this Applicant's Invention does not use shopbots. In fact, the Internet is not used in any manner in obtaining pricing information. It is duly noted that in [0004] Markopoulos mentions two (2) Shopbots mysimon.com and acses.com that purportedly compares prices of groceries and gaurmet groceries respectively. Both of these Shopbots search(ed) online websites, or charge sellers a fee to list thier products, that did not actively block them. As stated previously this practice is illegal. Also, the term "groceries" as used by price comparison websites, is a misnomer because they are non-pershiable food items offered by mail order businesses; the information does not pertain to local, brick and mortar, grocery stores. The difference between Markopoulos and the Shopbot therein mentioned is (one difference) that this Invention uses products of the local, brick and mortar, grocery store.

Compared to Markopoulos this Applicant's Invention does not use shopbots; does not withold prices; does not search websites and datamine them; deals solely, exclusively with information from local, brick & mortar, grocery stores. The method used to obtain the information is not fully disdosed in the Amended Application, but simply states that it is obtained by visiting each Supermarket in a given area at predetermined intervals. The information is obtained, not given, and done so legally.

[Left Blank]

This Applicant challenges the examiner to identify a website, software interface, or the like that compares prices of local grocery stores; there is none. Herein lies the uniqueness and novelty of this Invention. At the very least this should be considered an improvement. There is further uniqueness and novelty in that the Invention obtains the information, and several methods, and processes, that automatically display parity in prices. This has never been reduced to practice.

[Left Blank]

Issue III

Since Dworkin was not relied upon it is not essential to address it. However, the same argument made in issue II should be considered for this issue. At the very least, this is a profound improvement adding disstinct novelity and uniqueness.

The article of Kroger is duly noted. However, a news article that is brief and general in nature cannot be relied upon as the basis of a claim of prior art, or disclosure. The article is non-specific. Furthermore, Admark Media, or James PFlaum never reduced it to practice. In fact, the article states that the "Venture" was "put on hold" and that PFlaum "Intened" to launch a website, but never has.

[Left Blank]

In conclusion, the examiner is correct that Applicant's Claims are vague and indefinite. However, I disagree that Markopoulos is prior art, or disclosed useful information. Markopoulos is shopbot based and resells the information to the consumer. This invention does nether. Applicant is currently amending his application and has requested time to submit the amended application.

Respectfully Submitted,

DR

Dale Pate

Mailed via Certified U.S. Mail 7007 0220 0001 7524 4721